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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,636	04/14/2004	Kenneth H. Abbott	890057.417C2	6519
27195 7590 02/26/2008 AMIN. TUROCY & CALVIN, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114			EXAMINER HAILU, TADESSE	
			ART UNIT 2173	PAPER NUMBER
			NOTIFICATION DATE 02/26/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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## Office Action Summary

Application No.

10/824,636

Applicant(s)

ABBOTT ET AL.

Examiner

TADEESE HAILU

Art Unit

2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 36-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

1. This Office Action is in response to the amendment submitted with filing of RCE November 9, 2007.
2. The pending claims 36 through 47 are examined herein as follows.

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. As shown the table below, Claims 36-47 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8-19, respectively, of U.S. Patent No. 6,747,675. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 8-19 of the above patent is merely an obvious variation of claims 36-47, respectively, of the instant application. Therefore claims 36-47 are not patentably distinct from the earlier patent

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claims 8-19 and as such are unpatentable over obvious-type double patenting. A later application claim is not patentably distinct from an earlier patent claim if the later claim is obvious over the earlier claim, In re Longi, 759 F.2d at 896, and 225 USPQ at 651.

10/824,636	6,747,675
<p>36. A computer-implemented method for providing mediated information about a current user state that is modeled with multiple state attributes, comprising:</p> <p>receiving from a first source an indication of a first value for an indicated one of the state attributes of the modeled current user state;</p> <p>receiving from a second source an indication of a second value for the indicated state attribute;</p> <p>after an indication from a client for a value for the indicated state attribute wherein the client indication is a request for the value for the indicated state attribute, and</p> <p>after receiving the request from the client and before sending a produced mediated value, determining for each of the first and second values whether the respective first or second value satisfies an indicated criteria;</p> <p>when it is determined that neither of the first and second values satisfy the indicated criteria, requesting at least one of the first and second sources to supply at least one additional value for the indicated state attribute that satisfies the indicated criteria;</p> <p>receiving the at least one additional value for</p>	<p>8. A computer-implemented method for providing mediated information about a current state that is modeled with multiple state attributes, comprising:</p> <p>receiving from a first source an indication of a first value for an indicated one of the state attributes of the modeled current state;</p> <p>receiving from a second source an indication of a second value for the indicated state attribute; and</p> <p>after an indication from a client for a value for the indicated state attribute,</p> <p>sending to the client a mediate value for the indicated state attribute that is produced by mediating between available values for the indicated state attribute including at least the first and second values; and wherein the client indication is a request for the value for the indicated state attribute, and including,</p> <p>after receiving the request from the client and before the sending of the produced mediated value, determining for each of the first and second values whether the value satisfies an indicated criteria; and</p> <p>when it is determined that neither of the first and second values satisfy the indicated criteria, requesting at least one of the first and second sources to</p>

<p><i>the indicated state attribute that satisfies the indicated criteria;</i></p> <p><i>producing a mediated value to be sent to the client by mediating between the received at least one additional value; and</i></p> <p><i>sending to the client the mediated value for the indicated state attribute.</i></p>	<p><b><i>supply a value for the indicated state attribute that satisfies the indicated criteria;</i></b></p> <p><b><i>receiving in response to the requesting at least one additional value for the indicated state attribute that satisfies the indicated criteria;</i></b></p> <p><b><i>and producing the value to be sent to the client by mediating between the received additional values.</i></b></p>
37. The method of claim 36 wherein the indicated state attribute represents information about a user of the computer.	9. The method of claim 8 wherein the indicated state attribute represents information about a user of the computer.
38. The method of claim 37 wherein the represented information reflects a modeled mental state of the user.	10. The method of claim 9 wherein the represented information reflects a modeled mental state of the user.
39. The method of claim 36 wherein the indicated state attribute represents information about a physical environment of a user of the computer.	11. The method of claim 8 wherein the indicated state attribute represents information about a physical environment of a user of the computer.
40. The method of claim 36 wherein the indicated state attribute represents information about a cyber-environment of a user of the computer.	12. The method of claim 8 wherein the indicated state attribute represents information about a cyber-environment of a user of the computer.
41. The method of claim 36 wherein the indicated state attribute represents information about the computer.	13. The method of claim 8 wherein the indicated state attribute represents information about the computer.

42. The method of claim 36 wherein the indicated state attribute represents a current prediction about a future user state.	14. The method of claim 8 wherein the indicated state attribute represents a current prediction about a future state.
43. The method of claim 42 wherein the client indication is an indication of an interest in receiving values for the indicated state attribute, and wherein the produced mediated value is pushed to the client in response to the receiving of at least one of the first and second values.	15. The method of claim 14 wherein the client indication is an indication of an interest in receiving values for the indicated state attribute, and wherein the produced mediated value is pushed to the client in response to the receiving of at least one of the first and second values.
44. The method of claim 42 wherein the client indication is a request for the value for the indicated state attribute, and including requesting the first and second sources to supply the first and second values in response to the receiving of the request.	16. The method of claim 14 wherein the client indication is a request for the value for the indicated state attribute, and including requesting the first and second sources to supply the first and second values in response to the receiving of the request.
45. The method of claim 36 wherein the client indication is a request for the value for the indicated state attribute, and wherein the sending of the produced mediated value is in response to the receiving of the request.	17. The method of claim 8 wherein the client indication is a request for The value for the indicated state attribute, and wherein the sending of the produced mediated value is in response to the receiving of the request.
46. The method of claim 36 wherein the criteria is indicated by the client.	18. The method of claim 8 wherein the criteria is indicated by the client.
47. The method of claim 36 wherein the criteria for the value is based on precision of the value.	19. The method of claim 8 wherein the criteria for the value is based on precision of the value.

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***Allowable Subject Matter***

4. The examiner carefully considered claims 36-47. The prior art of records fails to teach the subject matter claimed in independent claim 36. Thus, Claims 36-47 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.


**CONCLUSION**

5. Information regarding the status of an application may be obtained from the patent application information retrieval (PAIR) system. Status information for published application may be obtained from either Private –PAIR or Public-PAIR. Status information for unpublished applications is available through Private-PAIR only. For more information about the PAIR system, please see [pair-direct.uspto.gov](http://pair-direct.uspto.gov) web site. Should you have questions regarding access to the PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Tadesse Hailu, whose telephone number is (571) 272-4051. The Examiner can normally be reached on M-F from 10:30 – 7:00 ET. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Stephen Hong, can be reached at (571) 272-4124 Art Unit 2173.

*Examiner Tadesse Hailu*  
*Art Unit 2173 – Operator Interface*

2/19/08

  
TADESSE HAILU  
PRIMARY EXAMINER